

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

COLONEL RODGERS,
Tenant/Petitioner

v.

NICOLE BLAUFOX,
Housing Provider/Respondent

Case No.: RH-TP-06-28737

FINAL ORDER

I. Introduction

On August 2, 2006, Tenant/Petitioner Colonel Rodgers filed a tenant petition with the Rent Administrator asserting that Housing Provider/Respondent Nicole Blaufox violated multiple provisions of the Rental Housing Act of 1985 (the “Act”) with respect to Tenant’s housing accommodation at 102 R Street, N.E., Washington, D.C. On February 14, 2007, the parties appeared at a hearing, testified, and submitted documentary evidence. For reasons discussed below, I find that Housing Provider has proven that she is exempt from the rent stabilization provisions of the Act because she is a small landlord who is not in the business of renting apartments. In addition, I conclude that Tenant has not proven his claim that Housing Provider attempted to retaliate against him for violations of the Act. Therefore, I am dismissing the tenant petition.

II. Findings of Fact

Housing Provider Nicole Blaufox is the owner of the housing accommodation at 102 R Street N.E. The housing accommodation is a single family house with a basement apartment (the “Apartment”). In August 2004 Housing Provider rented the Apartment to a previous tenant for \$950 per month.

In July, 2006, when the previous tenant left, Housing Provider advertised the Apartment on Craig’s List. Tenant Colonel Rodgers responded to the ad.¹ Housing Provider was reluctant to rent to him because she was concerned about his ability to pay the rent, but agreed to rent the Apartment to Tenant on the condition that he pay two months rent in advance in addition to a security deposit.

The monthly rent Housing Provider charged was \$950, the same as she charged the previous tenant. This rent was consistent with the rent charged for similar apartments in the neighborhood. Respondent's Exhibit ("RX") 213.² The Apartment was the only rental unit in the District of Columbia in which Housing Provider had an interest.

At the time she rented the Apartment to Tenant and up to the date the petition was filed, Housing Provider had not filed a registration statement or a claim of exemption for the rental unit with the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs (“RACD”). No certificate of occupancy had been issued for the housing accommodation. Petitioner's Exhibit ("PX") 101.

¹ “Colonel” is Mr. Rodgers’s first name. It is not a military rank.

² A list of the exhibits in evidence is attached as Appendix A.

In 2004 and 2005, before she rented the Apartment to Tenant, Ms. Blaufox was licensed as a real estate agent in the District of Columbia. Her real estate practice did not involve any apartments. It was limited to sales of single-family houses and was not her principal business. By the time of the hearing Ms. Blaufox had allowed her real estate license to lapse. She handled all the arrangements for rental of the Apartment on her own without the help of any agent or real estate professional. She was unaware of the requirement to file a claim of exemption for the housing accommodation with the RACD.

Shortly after Mr. Rodgers moved into the Apartment there was a problem with the plumbing. Housing Provider paid for Tenant to stay in a hotel for three nights until the plumbing was fixed. RX 202.

A check Tenant sent in payment of the May 2006 rent was returned for insufficient funds. A second check, in partial refund for contracting work that Mr. Rodgers never performed, also bounced.³ RXs 202, 203.

On June 16, 2006, Housing Provider served Tenant a 30 day notice to quit/vacate the property. RX 204. The notice was not on a standard form, and did not state: (1) the reason that Tenant was required to leave; (2) whether the property was registered with the Rent Administrator or exempt; or (3) whether a copy of the notice would be sent to the Rent Administrator.

On June 17, 2006, Tenant complained to Housing Provider in writing that the air conditioning in the Apartment was not working, stating that “it feels like 75 to 80 degrees in the

³ Ms. Blaufox paid Mr. Rodgers \$450 for landscaping work at the house that he never performed. Mr. Rodgers agreed to return the funds, and gave her a check for \$225 that bounced. RX 202.

basement,” and asserting “a national health risk.” RX 205. In response, Housing Provider agreed to leave the air conditioning on at all times rather than setting it on automatic.

Aside from the complaint about air conditioning, Tenant made no written complaints about services and facilities in the Apartment.

After Housing Provider filed her first notice to quit, in June 2006, Tenant changed the locks on the door to his Apartment and refused Housing Provider’s demand for a key. RX 207. Eventually Tenant was ordered to make the keys available by a District of Columbia Superior Court judge. RX 208.

On July 31, 2006, Housing Provider served a 30-Day Notice To Correct Violation or Vacate, demanding payment of a \$100 late fee and keys to all locks that Tenant installed. RX 214. The notice included: (1) a statement of the factual basis for the eviction and the lease provisions on which they were based; (2) the time by which the Apartment was to be vacated; (3) a statement that the housing accommodation was exempt from registration; and (4) a statement that a copy of the notice would be served on the Rent Administrator and the address to which it would be served.

On August 2, 2006, Tenant filed the current petition with the Rent Administrator. The petition alleged that: (1) the rent being charged exceeds the legally calculated rent ceiling for the unit; (2) the rent ceiling filed with the RACD for the unit is improper; (3) the building in which the rental unit is located is not properly registered with the RACD; (4) a security deposit was demanded after the date on which Tenant moved into the rental unit, where no security deposit had been demanded before; (5) retaliatory action had been directed against Tenant by Housing Provider for exercising Tenant’s rights in violation of Section 502 of the Rental

Housing Act; and (6) a notice to vacate had been served on Tenant in violation of Section 501 of the Rental Housing Act.

Following filing of the tenant petition police were called to the house after Tenant and Housing Provider got into a dispute. On September 25, 2007, the Superior Court of the District of Columbia issued a stay-away order against Mr. Rodgers. RX 208. On February 23, 2007, Housing Provider filed a complaint for possession in the Landlord/Tenant Branch of the Superior Court. RX 212.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (the “Act”), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings (“OAH”) has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

A. The Small Landlord Exemption

Most rental housing units in the District of Columbia are subject to the rent control provisions of the Act which regulate the rents that housing providers may charge. But the Act contains a “small landlord exemption” for housing providers who are not professional landlords. Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code

§§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17) “shall apply to each rental unit in the District *except*” [emphasis added]:

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation

D.C. Official Code § 42-3502.05(a)(3).

It is undisputed that Housing Provider had not filed a registration or a claim of exemption for the housing accommodation with the RACD. With exceptions not relevant here, the Rental Housing Act requires Housing Providers either to register a housing accommodation containing rental units or to file a claim of exemption. D.C. Official Code § 42-3502.05(a)(3), (f). Tenant has proved that Housing Provider failed to comply with the provisions of the Act. The burden then shifts to the Housing Provider to prove that she is exempt from coverage under the Act.

The party asserting an exemption has the burden of proving the exemption. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990). Notwithstanding the requirements of the Act, a housing provider can claim the benefits of the small landlord exemption and will not be penalized for failing to file a claim of exemption if he or she can

prove: that: (1) the housing provider was reasonably unaware of the requirement of filing a claim of exemption; (2) the rent charged was reasonable; and (3) the housing provider is not a real estate professional. *Beamon v. Smith*, TP 27,863 (RHC July 1, 2005) at 7 (citing *Gibbons v. Hanes*, TP 11,076 (RHC July 11, 1984) at 3, *Boer v. D.C. Rental Hous. Comm'n*, 564 A.2d 54, 57 (D.C. 1989), and *Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 597 (D.C. 1991)).

I conclude, based on the evidence and the credibility of Ms. Blaufox's testimony, that Housing Provider was reasonably unaware of the requirement for filing a claim of exemption and that the rent charged was reasonable. Ms. Blaufox's testimony that she was ignorant of the requirements for small landlords to file a claim of exemption is credible in light of her very limited experience as a landlord. In addition, the record shows that Ms. Blaufox is a natural person and the Apartment in question is the only rental unit that she leases in the District of Columbia.⁴

Although Ms. Blaufox formerly held a real estate license for two years, I also conclude that she was not a real estate professional as the term has been used by the Rental Housing Commission and the District of Columbia Court of Appeals. The starting point of analysis is the Court of Appeals' decision in *Boer, supra.*, a case where, as here: "It is undisputed that at the time of the lease the house was exempt from rent control, but the landlords did not comply with the requirement of filing a claim of exemption under [D.C. Official Code § 42-3505.02(a)(3)]." 564 A.2d at 55. The Court in *Boer* affirmed the Rental Housing Commission's conclusion in *Gibbons v. Hanes* that "a landlord should not be penalized if he can establish to the satisfaction

⁴ Some of the notices and letters that Ms. Blaufox send to her Tenant were on the letterhead of Gemstone Management, LLC. Ms. Blaufox testified that Gemstone was a company she used for services as an artistic consultant. The company had no interest in the housing accommodation and had nothing to do with real estate. Ms. Blaufox stated that she used the letterhead because she did not want her tenant to know that she was living alone in the house.

of the Examiner that he is *not a landlord regularly*.” *Boer*, 564 A.2d at 56 (quoting *Gibbons*, *supra*, at 3) (emphasis added).

In the *Hanson* decision, the Court of Appeals analyzed *Boer* and *Gibbons* at length. The tenant in *Hanson* urged that the small landlord exemption applied only to landlords who resided in the housing accommodation. The Court rejected this argument, noting that “the small landlord provision was not concerned with whether the landlord resided in the unit, but whether the landlord was *principally in the real estate business*.” 584 A.2d at 596 (citing *Revithes v. D.C. Rental Hous. Comm'n*, 536 A.2d 1007, 1014 (D.C. 1987) (emphasis added). The Court then observed that “The evidence revealed that [the housing provider] was not a real estate professional.” *Id.* at 597.

It is clear that the term “real estate professional,” as used by the Court of Appeals in this context, does not automatically apply to any person who happens to have been a licensed realtor. Rather, it is a term that is used to separate the professional landlord, whose livelihood involves renting property, from the incidental landlord who rents property as a source of additional income or a means of putting property to productive use. Indeed, the Court in *Hanson* noted that although the housing provider was a lawyer, who was sophisticated about legal matters, there was no reason to disturb the hearing examiner’s finding that she was reasonably unaware of the requirement for filing an exemption. 584 A.2d at 596-97.

In light of these decisions by the Rental Housing Commission and the Court of Appeals, I conclude that the mere fact that, before she rented the Apartment, Ms. Blafox had held a real estate license for two years does not disqualify her from the small landlord exemption. Ms. Blafox testified that she was unaware of the requirement to file a claim of exemption. Her real

estate license had lapsed by the time she rented the Apartment. Her practice had been limited to single family homes that were not subject to rent control. In these circumstances it is unreasonable to charge Housing Provider with knowledge of the requirement to file a claim of exemption.

It follows that Housing Provider is eligible for the small landlord exemption in these circumstances. The record demonstrates that: (1) The housing accommodation was owned by not more than four natural persons; (2) Housing Provider did not have an interest in any other rental unit in the District of Columbia; (3) the rent charged was reasonable; and (4) Housing Provider was reasonably unaware of the requirement to file an exemption.

B. Tenant's Complaints Concerning the Rent Ceiling and Registration

A housing provider who is subject to the small landlord exemption is exempt from the rent stabilization provisions of the Act, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17). *See* D.C. Official Code § 42-3502.05(a). The exempted provisions include Tenant's claim that the rent exceeds the legally calculated rent ceiling (D.C. Official Code § 42-3502.05 (1985));⁵ and the claim that the rent ceiling was improper. To the extent that Tenant complained of a reduction in services and facilities, that claim would also be barred.

⁵ Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent increases would be based on the present rent charged for a housing unit rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The amendment was effective as of August 5, 2006, and therefore does not affect the Tenant's petition here. *See* 53 D.C. Reg. 6688 (Aug. 18, 2006).

D.C. Official Code § 42-3502.11.⁶ Finally, Tenant's claim that the housing accommodation was not properly registered, while undisputed, is rendered moot where, as here, Housing Provider has established that she is covered by the small landlord exemption.

There remain three claims that are not subject to the small landlord exemption. These are Tenant's claims that: (1) a security deposit was demanded illegally; (2) a notice to vacate was served in violation of Section 502 of the Act, D.C. Official Code § 42-3502.01; and (3) Housing Provider directed retaliatory action against Tenant after Tenant exercised rights in violation of section 502 of the Act.

C. Tenant's Complaint That Housing Provider Demanded an Illegal Security Deposit

The first of these claims already has been addressed in the Findings of Fact above. Mr. Rodgers contended that the two-month's rent he paid before he moved into the Apartment included a security deposit and that Ms. Blafox's demand for an additional security deposit was illegal. I find Ms. Blafox's testimony more credible in light of the evidence that Mr. Rodgers was not creditworthy (RX 200). His credit report revealed that a number of his accounts were delinquent, and noted a "Serious delinquency and public record or collection filed." Respondent's Exhibit ("RX") 200. This information was inconsistent with the \$400,000 yearly income that Mr. Rodgers claimed in his rental application. RX 200. The preponderance of the evidence shows that Tenant agreed to pay Housing Provider two months rent and a security

⁶ Although Tenant testified about defects in the Apartment, he did not claim a reduction in services and facilities in his tenant petition. Therefore any claim against Housing Provider on these grounds also would be barred for failure to give proper notice. *See Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 (D.C. 2005) ("A petition must give a defending party fair notice of the grounds upon which a claim is based so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated.")

deposit in addition to the rent that was advanced. Housing Provider's demand for the security deposit did not arise in circumstances where no security deposit had been demanded before.⁷

The applicable provision of the Act, D.C. Official Code § 42-3502.17, requires that "Security deposits shall be collected pursuant to the Security Deposit Act, effective February 20, 1976 (D.C. Law 1-48, 14 DCMR 308 et seq.). The Security Deposit Act, in turn, sets forth the procedures and conditions for collection and retention of security deposits. These include a requirement that the security deposit be no more than one month's rent, that it be kept in an appropriate escrow account, and that the terms and conditions of payment be stated in the lease or in a receipt for the security deposit. *See* 14 DCMR 308. Tenant presented no evidence that Housing Provider violated any of these provisions.

D. Tenant's Complaint that Housing Provider Served an Improper Notice To Vacate

Tenant's second claim that is not subject to the small landlord exemption is that Housing Provider served a notice to vacate in violation of the requirements of Section 501 of the Rental Housing Act. Section 501 of the Act, D.C. Official Code § 42-3505.01(b), provides that "A housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate." The Act requires that a notice to vacate contain: (a) a statement of the factual basis for eviction, including a reference to the provisions on which the claim of eviction was grounded; (b) the time by which the Apartment

⁷ A copy of the lease attached to the tenant petition stated that: "Tenant paid August and September rent." I do not base my finding on the lease, though, because it was not offered in evidence, although it may constitute a judicial admission by Tenant because it was attached to the tenant petition which, in turn, was certified by Tenant as "true to the best of my knowledge and belief."

had to be vacated if the violation was not cured; (c) a statement that the housing accommodation was registered and the registration number; or a statement that it is exempt from registration; and (d) a statement that a copy of the notice to vacate was being furnished to the Rent Administrator, together with the address to which it was sent. *See* D.C. Official Code § 42-3505.01(a); 14 DCMR 4302.1.

Housing Provider's first notice to vacate, dated June 16, 2007, RX 204, did not comply with the requirements of the Act because it gave no reason for Tenant's proposed eviction. The notice thus violated the Act's requirements that "no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent," and the further requirement that a notice to vacate "contain a statement detailing the reasons for the eviction." D.C. Official Code § 42-3505.01(a). In addition, the notice did not state that a copy was being furnished to the Rent Administrator. 14 DCMR 4302.1(d).

Housing Provider's second notice to vacate, by contrast, complied with the provisions of the Act. RX 214. It stated the reasons for the eviction — failure to pay the late fee and changing the locks on the doors, allowed Tenant to cure the deficiencies within 30 days, indicated that the property was exempt from registration, and stated that that a copy of the notice would be served on the Rent Administrator.⁸

Because the first notice clearly did not comply with the Act's requirements, I conclude that Tenant has proven that Housing Provider violated the Act by serving an improper notice to vacate. It does not follow, though, that Housing Provider must be sanctioned for this omission.

⁸ The record does not disclose whether a copy of the notice was actually served on the Rent Administrator. Tenant did not contest the statement that the notice would be served.

The Act limits awards of rent refunds and roll backs to situations where the Housing Provider has charged a higher rent than that permitted under the Act or has substantially reduced services and facilities. D.C. Official Code 42-3509.01(a). The only remedy available for other types of violations, including service of an improper notice to vacate, is a fine. The Act provides that: “Any person who wilfully [sic] . . . (3) commits any other act in violation of any provision of this chapter or of any final administrative order under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.” D.C. Official Code § 42-3509.01(b).

To impose a fine, the Act requires that the violation in question be “willful.” Willfulness, in turn, requires more than mere violation of the Act. It requires that the Housing Provider “intended to violate or was aware that it was violating a provision of the Rental Housing Act.” *Miller v D.C. Rental Hous. Comm’n*, 870 A.2d 556, 558 (D.C. 2005). Tenant must show that Housing Provider intended to violate the law or possessed a culpable mental state. *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm’n*, 505 A.2d 73, 76, n. 6 (D.C. 1985).

Evidence of willfulness is absent here. Ms. Blaufox was not a professional landlord who was familiar with the arcane requirements of the Act. Moreover, her service of an appropriate notice to vacate six weeks after her first inappropriate notice suggests that she attempted to cure her oversight when she became aware of the defects in the first notice. *See* RX 204, RX 214. I conclude, therefore that Ms. Blaufox’s violation was not willful and I will not impose any fine.

E. Tenant’s Complaint of Retaliatory Action

Tenant’s final claim in the tenant petition is that “Retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in

violation of section 502 of the Rental Housing Emergency [sic] Act of 1985.” The Act prohibits a housing provider from taking “any retaliatory action against any Tenants who exercise any right conferred upon the Tenants by this chapter.” Retaliatory action includes “any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit” D.C. Official Code § 42-3505.02(a). *See also* 14 DCMR 4303.3 (“Retaliatory action shall include . . . (a) Any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit.”). The evidence here shows that Housing Provider sought to evict Tenant. But the evidence does not show that this act was retaliatory.

To prevail on a claim for retaliation, Tenant must show that the Housing Provider’s act was provoked by Tenant’s exercise of his rights under the Act. Tenant has not established a link between any exercise of these rights and Housing Provider’s decision to terminate his tenancy. Ms. Blaufox testified that she sought to evict Mr. Rodgers because he was late in his payments, a fact that Mr. Rodgers acknowledged. Moreover, he has not shown that Housing Provider’s first notice to vacate was prompted by any complaint. Indeed, the converse seems to be the case. Tenant’s complaint about the air conditioning on June 17, 2007, came on the day following the date of the first notice to vacate. RX 204.

Similarly, Tenant failed to prove that Housing Provider’s second notice to vacate, RX 214, was provoked in retaliation for any exercise of Tenant’s rights. The second notice to vacate specified Tenant’s violation of the lease provisions — failure to pay the late fee and changing the locks on the door — and stated that Tenant could cure those violations by paying the balance due and providing duplicate keys for Housing Provider. There is nothing about the circumstances to suggest that the notice was retaliatory.

I reach this conclusion after careful consideration of the presumption established by the Rental Housing Act that a rent increase is a retaliatory act if the housing provider implements it within six months after the tenant engages in certain specified activities:

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

D.C. Official Code § 42-3505.02(b).

Although the record here establishes that Housing Provider served a notice to vacate within six months of when Tenant complained about the air conditioning, RX 205, the record does not establish a presumption of retaliatory action. Tenant did not demonstrate that the temperature in the Apartment — 75 – 80 degrees — constituted a violation of the housing regulations. In any event, Housing Provider cured the problem promptly. RX 206.

Mr. Rodgers asserted that, aside from the problems with the air conditioning, there were numerous other deficiencies in the Apartment. He testified that he had complained that the Apartment was cold in the winter because the heat was inadequate, that the carpet was dirty, the wiring was poor, and the toilet did not flush properly. Ms. Blaufox flatly denied that Tenant had

complained about anything except the air conditioning. I conclude that Tenant failed to prove any specific complaints about substandard conditions except for the complaint about the air conditioning. Mr. Rodgers's testimony about his alleged complaints was vague. He did not describe the problems with the wiring or the toilet. He did not give any specific dates for his complaints or any description of how he made the complaints or what he said. He did not complain in writing about the lack of heat, or any of the other conditions, although he complained in writing about temperatures of 75 to 80 degrees that many people would not consider oppressive. Moreover, the record shows that Housing Provider not only responded to Tenant's earlier problem with plumbing in the Apartment, but paid for Tenant to stay in a hotel during the repairs. For these reasons, I credit Ms. Blafox's testimony that Mr. Rodgers did not complain about the conditions in the Apartment before he filed the tenant petition.

In any event, the complaints Mr. Rodgers claimed to have asserted before he received the first notice to vacate were all oral and unwitnessed. Nor did he prove that any of them involved violations of the housing code. Accordingly, the presumption of retaliation does not apply in these circumstances.

IV. Conclusion

For the reasons explained above, I find that Tenant has not sustained his burden of proof to establish that Housing Provider charged rent in excess of the legal rent ceiling or that the rent ceiling was improper. Nor has Tenant proven that Housing Provider demanded a security deposit illegally or directed retaliatory action against Tenant for exercising any rights under the Rental Housing Act. The evidence shows that although Housing Provider failed to register the housing accommodation, as required by law, she was not a professional landlord and was not

aware of the registration requirements. Because she has proven that she is covered by the small landlord exemption, she may not be penalized for her failure to register the unit.

Similarly, Housing Provider may not be penalized for her failure to serve a proper notice to vacate in June, 2006. Although the notice did not comply with the requirements of the Rental Housing Act, the record shows that she did not intentionally violate the Act and that her service of the notice was not willful. Absent proof of willfulness, no fine may be imposed.

IV. Order

Accordingly, it is this **21st** day of **September, 2007**:

ORDERED that this case is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Final Order are stated below.

September 21, 2007

/s/

Nicholas H. Cobbs
Administrative Law Judge

APPENDIX**Exhibits in Evidence**

Exhibit No.	Description
PX 100	Certificate from Department of Consumer and Regulatory Affairs dated September 26, 2006
PX 101	Request for Records Certification dated September 22, 2006
RX 200	Rental Application and Credit Report
RX 201	Hotel Reservation Confirmation
RX 202	Copy of Returned Checks
RX 203	Memo from Colonel Rodgers to Nicole Blafox dated June 5, 2006
RX 204	Notice to Quit/Vacate dated June 16, 2006
RX 205	Memo from Colonel Rodgers to Nicole Blafox dated June 17, 2006
RX 206	Letter from Nicole Blafox to Colonel Rodgers dated June 17, 2006
RX 207	Photograph of Door Lock
RX 208	Superior Court of the District of Columbia Praecipe filed September 25, 2006
RX 209	Superior Court of the District of Columbia Notice of Hearing and Initial Order dated September 25, 2006
RX 210	Letter from Nicole Blafox to Colonel Rodgers dated December 3, 2006
RX 211	Copy of Certified Mail and Delivery Confirmation Receipt
RX 212	Superior Court of the District of Columbia Complaint for Possession of Real Estate filed February 1, 2007
RX 213	Copy of Craig's List Apartment Ads dated February 6, 2007
RX 214	Notice To Correct or Vacate dated July 31, 2006